

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

J U D G M E N T

**D.B. CRIMINAL APPEAL NO.192/2002
(Chautha Ram & Ors. Vs. State)**

Appeal under Section 374(2)
Cr.P.C. against the Judgment of
conviction and sentence dated
05.02.2002 passed by learned
Additional Sessions Judge (Fast
Track), Bikaner in Sessions Case
No.34/2001.

DATE OF JUDGMENT : FEBRUARY 15, 2005.

P R E S E N T

**HON'BLE MR.JUSTICE B.PRASAD
HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK**

Mr. D.K. Gaur for appellants.
Mr. Vishnu Kachhawwa, Public Prosecutor.
Mr. H.S.S. Kharlia)
Mr. S.S. Dillion) for complainant.

BY THE COURT : (Per Hon'ble B. Prasad, J.)

The present appeal arises out of the decision of the Court of Additional Sessions Judge (Fast Track), Bikaner in Sessions Case No.34/2001 (State Vs. Het Ram & Ors.) dated 05.02.2002. The prosecution proceeded against ten persons, one out of them is Madan Lal who is present before us as one of the accused appellants. Other nine persons were occupants of the jeep. Out of these nine persons, seven persons were acquitted by the trial court and two accused, namely, Chautha Ram and Kheraj Ram were

convicted. Participation of these two accused persons, as per the prosecution version was that they used fire arms. Fire arm used by Kheraj Ram was ineffective as it missed and did not cause any injury. As regards participation of Chautha Ram, his fire arm became effective and Jagdish got killed. The trial court convicted accused appellant Chautha Ram under Section 302 I.P.C. and sentenced him to life imprisonment and ordered to pay a fine of Rs.1500/-. Madan Lal and Kheraj Ram were convicted under Section 302 read with Section 34 IPC and were sentenced for life imprisonment and ordered to pay a fine of Rs.1500/- each. Other accused persons, namely, Hetram, Ramniwas, Jiyaram, Dakkarram, Patram, Ramgopal and Ramnarain were acquitted of the offence under Section 302 read with Section 149 IPC by giving the benefit of doubt.

Aggrieved by the conviction and sentence, the present appeal has been filed before us.

A prosecution was initiated on the basis of a First Information Report lodged on the basis of statement of PW2 Dhuda Ram vide Exhibit-P/2 on 10.7.98. According to the statement, Dhuda Ram informed to the police that while he was going towards his house after taking milk from Hari Ram's house and when he reached near the Simavarti Hostel's Road, he

saw that Jagdish was going on a Moped (M-80). At that time, he saw that accused persons were coming in a jeep, which was being driven by Madan Lal and all the accused persons were sitting in the jeep. When the jeep came near the Moped of Jagdish, Kheraj Ram fired on Jagdish from his pistol but he missed. Thereafter, Chautha Ram fired from his pistol which became effective and Jagdish fell down on the ground. They stopped the jeep and put Jagdish into the jeep and threw him at the edge of the road. At that time, elder brother of Jagdish, Brijlal came there and put Jagdish into the jeep and took him to the hospital. On the basis of the statement, an FIR was registered. On registration of FIR, investigation was initiated. Charge-sheet was filed against 10 persons. The case was committed to the Court of Session from where it was made over to the trial court. The trial court framed charges against all the accused persons. The accused persons denied the charges and claimed trial.

At the trial, prosecution examined as many as 12 witnesses and produced as many as 39 documents (Exhibit-P/1 to Exhibit-P/39) to establish the prosecution case. The trial Judge, after considering the statements of the witnesses and the documents produced, came to the conclusion that there is no doubt that Jagdish died at the hospital due to the injuries on the day of the incident at about 10-11 in

the night after he was taken to the hospital. The trial court also came to the conclusion that the injuries sustained by the deceased were from fire arm. The statement of PW-2 also stood corroborated by the statements of eye witnesses. The trial court also came to the conclusion that the fire made from the pistol of Chautha Ram became effective and convicted accused Chautha Ram under Section 302 IPC simplicitor. The trial court further came to the conclusion that Madan Lal driver of the jeep and accused Kheraj Ram were guilty for the offence under Section 302/34 IPC. However, other accused persons were acquitted of the offence under Section 148 IPC.

Learned counsel for the appellants argued in favour of the appellants and submitted that it is not a case where it can be said that eye witnesses are witnesses of truth. The case is based on previous enmity of roughly about 15 years, due to which Jagdish was killed. There was enmity between father of Jagdish and Chautha Ram, therefore, the case is based on the ground of enmity and thus, the testimony of this witness cannot be relied. The FIR which was lodged by witness PW2 Dhuda Ram cannot be relied as at the time of occurrence, he was said to have been at Chabbili Ghati, a place which is farther from the Gangashahar Ghati. That being the position, his claim that he was present at the time of the incident, cannot be

accepted. Other eye witness PW3 Brijlal is brother of deceased Jagdish and he was not present at the place of occurrence. PW4 Hariram is also a witness of truth. He was only a tendering witness and the tendering witness has tendency to appear and disappear. According to his statement, when he was going towards Gogagate, he saw Dhuda Ram, who told him that Chautha Ram and eleven others persons fired at Jagdish. This kind of statement cannot be relied upon with the possibility of being evidence against any of the accused persons. PW-2 Dhuda Ram informed that eleven persons including accused Chautha Ram caused injury to Jagdish. Therefore, testimony of this witnesses cannot be accepted. There is no recovery or circumstantial evidence.

Per contra, learned Public Prosecutor submitted that it is not a case that witness PW-2 Dhuda Ram was not present at the place of occurrence but he submitted that he was resident of Chabbili Ghati and was going towards Gangashahar Ghati where he saw the deceased and the accused persons, who caused injuries to Jagdish. Therefore, he was witness of incident and described the incident rightly.

Dhuda Ram is a close relative of deceased Jagdish (real brother of father of the deceased). In these circumstances, he will leave doubt on real

corroboration of the occurrence and also on identification of assailants. It cannot be clearly said that the real assailant were accused Chautha Ram and others. Kheraj Ram fired on Jagdish but missed and thereby he committed an offence where he shared common intention with the deceased. Madan Lal being driver of the jeep facilitated commission of the crime and thereby he committed the offence of abetement.

We have heard learned counsel for the parties and have given our thoughtful consideration.

The prosecution nabbed seven persons who had only accompanied these three appellants who are before us. The prosecution has not able to establish that other seven persons have participated in the occurrence. They are only implicated in the occurrence on the story made by the prosecution. There is only one fire arm injury which is said to have been caused by pistol of Chautha Ram which is corroborated by the statement made by PW2 Dhuda Ram and shows participation of Chautha Ram in the occurrence, which has also been corroborated by Exhibit-P/2. As per the statement of witness PW2 Dhuda Ram, fire arm of Chautha Ram became effective due to which Jagdish died. The witnesses produced by the prosecution i.e. eye witnesses and other substance corroborated with the medical evidence. Therefore, offence under

Section 302 IPC is made out against accused appellant Chautha Ram. In view thereof, we find that accused appellant Chautha Ram has been rightly convicted for the offence under Section 302 IPC and the appeal filed by him deserves to be dismissed. Since he used fire arm, offence under Section 3/25 of the Arms Act is made out, which does not call for any interference. Therefore, the plea that offence under Section 3/25 of the Arms Act is not made out, also cannot be accepted. So far as accused Madan Lal and Kheraj Ram are concerned, it can be said that they were present at the time of the occurrence but the presence of Madan Lal and Kheraj Ram at the place of occurrence is as other seven persons, who have already been acquitted by the trial court. Participation of these two persons cannot be said to be almost same. The prosecution has involved seven other persons, who are held to be innocent, therefore, it cannot be said that they have done overtact. We find that prosecution has made an attempt to involve all the persons in the case as assailants and tried to relate all in the case of death. In view thereof, these two accused persons, namely, Kheraj Ram and Mandan Lal deserve benefit of doubt.

In the result, the accused appellant Chautha Ram, who has been sentenced to life imprisonment under Section 302 IPC, his conviction and sentence is

maintained. His convictions for other offences are also maintained. As regards rest of the accused persons, namely, Madan Lal and Kheraj Ram, they are acquitted of the charges under Sections 302/34 IPC. Consequently, the sentence passed against them under Section 302 read with Section 34 IPC is annulled. They are on bail. Their bail bonds are cancelled.

The appeal is partly allowed as indicated above.

(SATYA PRAKASH PATHAK), J.

(B. PRASAD),

J.

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